

**STATEMENT OF REP. CAROLYN McCARTHY OF NEW YORK
SUBCOMMITTEE ON CRIME
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HR 1415, NICS Improvement Act

Thank you, Mr. Chairman for affording me the opportunity to speak today. I'd also like to thank Ranking Member Scott. I ask that my complete statement be included in the record.

Today, I'd like to talk to you about HR 1415, the NICS Improvement Act.

This bill would increase the effectiveness of the existing National Instant Criminal Background Check System (NICS), the database used to check potential firearms buyers for any criminal record or history of mental illness.

Overall, NICS has been a success. Since 1994 more than 1.2 million individuals have been denied a gun because of a failed background check. At the same time, 98 percent of purchases were cleared.

NICS also provides the vast majority of honest gun dealers peace of mind in knowing they are selling their products to citizens who will use them safely and legally.

However, the NICS system is only as good as the information states provide to it. And unfortunately, many states don't have the resources necessary to enter all of their disqualifying criteria into the NICS system.

The end result is that felons and others who are not permitted by existing law to buy guns are passing background checks buying guns through legitimate means.

In fact, twenty-eight states have automated less than seventy-five per cent of their criminal history records.

In fifteen states, domestic violence restraining orders, which are a disqualifying offense, are not accessible through NICS, because those records are incomplete or not fully automated.

Thirty-seven states do not enter the records of those mentally adjudicated into the NICS database for a number of reasons.

These loopholes have cost countless people their lives, including two of my constituents.

On March 8, 2002, Peter Troy purchased a .22 caliber semi-automatic rifle from a legitimate gun dealer in New York. He had a history of mental health problems and his own mother had a restraining order against him as the result of his violent background.

Yet his NICS background check turned up no red flags.

It was illegal for him to purchase a gun; but, like so many others, he simply slipped through the cracks in the NICS system because of a lack of information.

Four days later, Peter Troy walked into the Our Lady of Peace Church in Lynbrook, New York, opened fire, and killed Rev. Lawrence Penzes and a parishioner, Eileen Tosner.

Peter Troy had no business buying a gun, and the system created to prevent him from doing so simply failed.

It is only a matter of time before the system's failings lead to larger tragedies.

We must fix the NICS system and allow it do what it was designed to do.

The responsibility for the accuracy and effectiveness of the NICS system ultimately belongs to the states; however, many state budgets are already overburdened.

This legislation would provide grants to states to update the NICS system. It includes \$250 million for each of the next three years for

state law enforcement and \$125 million for each of those three years for state court systems. States would have the resources to update their NICS databases to include felons, people that have been adjudicated with certain mental and emotional disabilities, and domestic abusers.

The bill's goal is to have had all 50 states enter at least 90% of their disqualifying information into NICS. States that don't comply or fall short of these goals will be penalized with a 5% reduction of certain Department of Justice grant allocations.

It is important to keep in mind that this bill does not infringe on anybody's 2nd Amendment Rights, which I support. It simply enforces current law.

If HR 1415 becomes law, law-abiding citizens who want to buy a gun legally will not experience any delay at the point of purchase.

And this bill poses no new burden on gun sellers.

In fact, I first introduced this bill in 2002 with my friend and colleague, Mr. Dingell of Michigan, who is well known for his strong support of gun rights and the 2nd Amendment.

In 2002, the House passed this legislation by voice vote. Unfortunately, the other body didn't have the time to take up this legislation before the 107th Congress came to an end. The measure had the support of Senators Hatch and Craig, another two longtime supporters of gun rights.

Mr. Chairman, as you know, the Brady check under the NICS System consists of two-steps.

First, the NICS Call Center representative or NICS E-Check system runs a computer search of several databases to see if the purchaser has a record that prohibits him or her from possessing a firearm under 18 U.S.C. Section 922(g). Specifically, the NICS computer search includes a search of the:

- **Interstate Identification Index (III)** - a computerized system that contains records from participating states and the FBI's criminal history databases;
- **National Crime Information Center 2002 (NCIC)** - a system that stores data provided by state and local law enforcement, including information on wanted persons, missing persons, stolen property, protection orders, etc.; and
- **NICS Index File** - a compilation of databases ranging from the DHS/INS files on immigration status to a miscellaneous file, which States can use to inform NICS that a person is in a prohibited category or cannot purchase a firearm under state law.

In the end, this initial computer search seeks to determine whether or not the purchaser falls within one of the nine categories prohibiting a person from purchasing a firearm under 18 U.S.C. Section 922(g).

The Brady check is complete at this stage if the initial computer search indicates the purchaser has no record ("*Proceed*") or a record indicates the purchaser is prohibited from purchasing a firearm ("*Denied*"). The NICS System immediately notifies gun dealers if one of these determinations is reached. The vast majority of Brady checks fall into this category and are completed in a matter of minutes, if not seconds.

Second, if the initial computer search cannot reach a final determination, the call is passed on to a NICS representative to conduct a human search for missing information that will allow NICS to reach a determination. The NICS System typically cannot reach a determination because information it should receive from the states is not available. A classic example is when III or NCIC indicates that a purchaser was arrested in a state, but the state has not entered the disposition of the case into III or NCIC. In short, the NICS System cannot determine whether the purchaser was convicted or acquitted and cannot make a final determination. In this situation, the NICS representative literally must attempt to get missing information to make a NICS determination by calling state and local courthouses, judges, clerks or law enforcement to get information.

If the NICS System cannot give a response to the gun dealer within three business days, the dealer has permission to sell or transfer the firearm to the purchaser under the Brady law. However, the NICS System will continue to attempt to reach a final determination for a brief period of time. If after three days it discovers the purchaser was ineligible to purchase a firearm, the FBI NICS System notifies ATF and agents will seek to recover the firearm from the unauthorized purchaser.

I want to reiterate that the system works best when it has all relevant information. Legal sales are approved promptly, and federal agents do not have to waste time tracking down unauthorized weapons.

Mr. Chairman, I now want to remind you of several reports from the Department of Justice on the NICS process and on the data used by NICS to conduct background checks.

In August 2004, the Office of Justice Programs, Bureau of Justice Statistics (BJS), published *Survey of State Records Included in Presale Background Checks: Mental Health Records, Domestic Violence Misdemeanor Records, and Restraining Orders, 2003* (NCJ 206042). BJS conducted a survey to examine the quality and availability of State records for these categories of people who are barred under current law from possessing a gun. Once you review this report, you will understand why each state needs a central repository for criminal and court records of those persons who are not legally entitled to a gun. The present records system in many states is incomplete and fragmented.

Criminal history disposition is a key component of a total NICS system. In January 2005, the FBI's Criminal Justice Information Services Division issued its "NICS Operations Report 2003-2004." It notes that "[f]inal disposition information is vital to the NICS because it is required in order to determine the eligibility of potential firearm purchasers."

The final disposition of arrests is crucial to the accuracy of a NICS background check. I am not talking about only felony arrests. The law denies a gun to a person convicted of a domestic violence misdemeanor offense. Accurate records in NICS keep guns out of

the hands of abusive people. All it takes is one incomplete record, and tragedy ensues.

The FBI's comments were reinforced by the BJS report *Improving Access to and Integrity of Criminal History Records* (July 2005, NCJ 200581). This report notes that in a 2001 survey "[s]ix states reported that 90% or more of their arrests had corresponding final dispositions." It also noted that "[i]n nine States less than half of the arrests had final dispositions recorded in the databases."

In many states, no single agency is responsible for providing information on final disposition. In one state, it may be the arresting agency. In another, the prosecutor. In a third, the court. We need timely and accurate information on the disposition of cases so that barred people do not walk out of court and into a gun shop. We need coordination and cooperation between state courts and state law enforcement. Otherwise, we cannot enforce existing law.

I was pleased to see that the July 2005 BJS report included five recommended action items. These recommendations included (1) obtaining full participation of the States in the FBI's Interstate Identification Index (III); and (2) improving State contributions to the FBI's national databases of prohibited purchasers. The NICS Improvement Act would help implement those recommendations.

Mr. Chairman, I would never claim to have all the answers to improving the background check process. I welcome the suggestions and comments of the members of this committee, the administration, and other parties interested in keeping guns out of the hands of criminals.

I have three goals that I hope to achieve with HR 1415. First, strengthen the enforcement of existing law. Second, help the states compile and provide the data that will enforce existing law. Third, get as much of that data into NICS as quickly as possible.

I want to work with you and others to achieve these goals.

The background records system is much better than it was 12 years ago. However, much more needs to be done before all relevant records are provided to NICS.

In closing, I believe that HR 1415 is common sense legislation that will keep guns out of the hands of criminals and others who the law prohibits from having firearms.

And it does this without infringing on the 2nd Amendment rights of law-abiding Americans.

Thank you for time, and I'd be happy to answer any questions you may have.

SUMMARY OF HR 1415

Enforce 1968 Gun Control Act

Under the 1968 Gun Control Act, an individual is prohibited from possessing a firearm if he or she:

- (a) is under indictment or has been convicted of a crime punishable by more than one year;
- (b) is a fugitive from justice;
- (c) is an unlawful user or an addict of any controlled substance;
- (d) has been adjudicated as a mental defective or has been committed to any mental institution;
- (e) is subject to a court order restraining them from domestic violence;
- (f) has been convicted of a domestic violence misdemeanor;
- (g) has been dishonorably discharged from the military;
- (h) is an illegal alien; or
- (i) has renounced U.S. citizenship.

The NICS Improvement Act enforces existing law by requiring states to automate and share disqualifying records with the FBI's NICS database.

Transmittal of Federal Records to NICS

All federal agencies shall transmit all relevant records relating to persons disqualified from acquiring a firearm under federal law to the Attorney General for inclusion in NICS.

For example, the Department of Homeland Security shall transmit all relevant records of persons disqualified from acquiring a firearm under federal law, including illegal aliens, visitors to the United States on student visas, and visitors on tourist visas.

Transmittal of State Records to the NICS

Each State shall provide information on disqualified persons to the U.S. Attorney General for inclusion in NICS.

- **Access to information** - Any information provided to the Attorney General under this section may only be accessed by personnel legally entitled to access NICS for the purposes of conducting a background check for a firearm purchase.
- **Privacy protections** - The Attorney General shall work with federal, state, local law enforcement and the mental health community to establish protocols for protecting the privacy of information sharing.

Grants to States

The Attorney General shall award a grant to each state to offset the initial costs directly associated with complying with this section.

- **Authorization of Appropriations** - \$250,000,000 for fiscal years 2006, 2007, 2008.
- **Incentive for State Participation** – Waive the 10 percent state matching requirement for National Criminal History Improvement Program (NCHIP) grants for a state that automates and shares at least 90 percent of all disqualifying records. The waiver period shall not exceed 5 years
- **Noncompliance** - After three years, the FBI will report on the progress of states automating their databases and supplying that information to the federal NICS database. The Department of Justice will be authorized, but not required, to deny up to 3 percent of funds available under the Omnibus Crime Control and Safe Streets Act of 1968, to any state that fails to automate 60 percent of its disqualifying records and supplying that information to the federal NICS database.

After 5 years, if states have failed to automate at least 90 percent of its disqualifying records, and supply that information to the federal NICS database, the Department of Justice is required to deny 5 percent of funds available each year under the Omnibus Crime Control and Safe Streets Act of 1968 until the state has automated at least 90 percent of disqualifying records, and has supplied that information to NICS.

- **Waiver by Attorney General** - The Attorney General may grant a waiver to states that do not comply if they provide compelling evidence explaining their inability to automate at least 90 percent of all records covered by this bill.

Grants to State Courts for the Improvement in Automation and Transmittal of Disposition Records

Establishes a grant program for state courts to assess and improve handling of proceedings related to criminal history dispositions, and temporary restraining orders, as they relate to disqualification from firearms ownership under state and federal laws.

In the first fiscal year after the enactment of this Act, the Attorney General shall make grants to the Chief Judicial Officer of each state for the purpose of conducting *assessments* of state courts, and automating and transmitting court arrest and conviction disposition records as they relate to disqualification from firearms ownership under state and federal laws.

In subsequent fiscal years, the Attorney General shall make grants to the Chief Judicial Officer of each state for the purpose of *implementing systems and procedures* for the automation and transmittal of court arrest and conviction disposition records as they relate to disqualification from firearms ownership under state and federal laws.

- **Authorization of Appropriations** - \$125,000,000 for fiscal years 2006, 2007, 2008.

